IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

MFA.No. 188 of 2000

O.P.(MV)NO.505/1995 OF THE MACT, PALAKKAD
.....

APPELLANT/PETITIONER:

K.C.SHEEJA, D/O CHAMI, KORONDA HOUSE, P.O.MANIKKANERI, PALAKKAD DIST.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS/RESPONDENTS:

1. RAMAKRISHNAN, S/O PONNU @ KUNJANDI, KAINITHOTTIL VEEDU, PERUMPARARI, MANNARKKAD, PALAKKAD.

2. K.M.ABDUL JALEEL, S/O MUHAMMED, KODAKKARRIL VEEDU, KALLADIKODE, DO.

3. THE MANAGER, UNITED INDIA INSURANCE CO. LTD. , PALAKKAD POLICY NO.101201/31/21/1/ 7298/94 VALID FROM 5.6.94 TO 4.6.95

4. CHENTHAMARAKSHAN, S/O KUNJAN, ERAPPARAMKADA, EZHAKKAD, PALAKKAD.

5. RAMESH KUMAR, S/O SUKUMARAN, THATHEESH NIVAS, EZHAKKAD, PALAKKAD (DELETED).

6. THE MANAGER, ORIENTAL INSURANCE CO. LTD. PALAKKAD POLICY NO.441102/208/033/NW/4437/95

(DELETED AS PER ORDER DT. 12.12.06 ON IA 2340/06)

BY ADV. SRI.K.SAJAN VARGHESE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 188 of 2000

JUDGMENT

Koshy, J.

The appellant, at the age of 19, met with an accident, while she was studying for B.A. degree course. She suffered fracture of femur of left leg apart from other injuries. She claimed a total compensation of Rs.4,25,000/-. However, the Tribunal granted only Rs.80,700/-. The Tribunal found that the accident occurred due to the negligence of the driver of the vehicle, insured by the third respondent Insurance company. The only dispute is with regard to the quantum of compensation.

2. The Tribunal has taken only Rs.600/- as the multiplicand, after assessing Rs.900/- as the notional income. The question of deduction of one third is applicable only in death cases, as after the death no personal expenses will be incurred by

the deceased. But, in the case of injuries, the victim has to continue to spend on personal expenses. Under the second schedule, the notional income of a non-earning person is assessed at Rs.15,000/- per annum (Rs.1,250/- p.m.). It is argued by the learned counsel for the appellant that since the appellant was a degree student, at least double the notional income fixed should have been adopted. Since no one can predict anyone's life, we are of the opinion that at least Rs.15,000/- can be fixed as the notional income for calculating the compensation. The doctor certified 15% permanent disability. The Tribunal accepted the same. It is the contention of the appellant that as her right leg was affected with polio and it has become completely paralysed and she was able to walk with her left leg and that was got fractured. Therefore, 15% permanent disability assessed by the doctor is not sufficient for calculating loss of earning capacity, as she is virtually crippled because of the accident.

However, we are of the opinion that compensation need be granted only for 15% permanent disability. If that be so, for disability and other consequences, compensation payable will be 15,000 x 15 x 16 = 36,000. The Tribunal has granted only Rs.17,280/- on this count. So, she will be entitled to an amount of Rs.18,720/- as additional compensation. We are of the view that the compensation awarded on other heads is just and reasonable. Therefore, we direct the third respondent Insurance Company to deposit Rs.18,720/- with 8% interest from the date of application till date of its deposit, over and above the amount awarded by the Tribunal. On deposit of the amount, the appellant will be free to withdraw the same.

The appeal is allowed in part.

(J.B.Koshy, Judge)

11th June,2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.188 OF 2000

JUDGMENT

11th June, 2007